

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 422 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BHANUBEN GULABBHAI MISTRY

Versus

BAPAINMAIN WD/O.MANEKSHA ARDESAR KOTWAL  
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Appearance:

MR PV HATHI for Petitioners  
MR DD VYAS for Respondent No. 1, to 7  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the original defendants-tenants, who were sued by the respondents-plaintiffs-landlords for a decree of eviction under the provisions of the Bombay Rent Act, on the ground that the tenants were in arrears of rent for more

than six months, and had neglected to comply with the demand made in the statutory notice.

2. The trial court, after appreciating the evidence on record, passed a decree in favour of the landlords and against the tenants, by applying the provisions of section 12(3)(a) of the Bombay Rent Act. On the facts of the case the trial court found that the tenants had not even replied to the statutory notice of the landlords, that they had not made an application under section 11(1) of the Bombay Rent Act for determination of standard rent and in fact such a contention was not taken even in the written statement. Thus, there was no dispute as to standard rent.

3. The tenants, therefore, preferred an appeal under the provisions of the Bombay Rent Act. The lower appellate court on a reappreciation of the evidence on record, confirmed the findings recorded by the trial court and confirmed the decree of eviction. It is pertinent to note that the lower appellate court also took into consideration that in case section 12(3)(a) had no application to the facts of the case, the case would be covered by section 12(3)(b) of the Bombay Rent Act. The lower appellate court, however, found that even if section 12(3)(b) were applied to the facts of the case, the tenants had failed to comply with the requisite conditions laid down by the said provision, by not depositing the due rent in court on the first date of hearing (the date of framing of the issues) and even thereafter were not regular in depositing the due rent in court. The lower appellate court, therefore, confirmed the decree passed by the trial court.

4. Hence the present revision by the defendants-tenants.

5. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of

evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. Only a few salient features require to be noted.

7. It was contended that section 12(3)(a) would not apply to the facts of the case inasmuch as the tenancy was not a monthly tenancy, but was an annual tenancy. This contention is not based on any documentary evidence whatsoever, nor based on any other circumstantial evidence. The only fact which the tenants could rely upon in support of this proposition is that on two occasions the tenant had paid the rent at intervals of six months. The trial court as also the lower appellate court has discarded this hypothesis on grounds of common sense. If the tenancy was a monthly tenancy, it is understandable that the tenant may pay at his convenience, whether at six monthly intervals or at an interval of one year or even two years, so long as the landlord did not object. This is more likely where we find on the facts of the case that the landlord was residing in a different town, and that the tenant used to pay the landlord the due rent as and when he visited the landlord at the latter's residence. However, if the tenancy was an annual tenancy, no tenant would pay rent at six monthly intervals inasmuch as this would amount to payment of advance rent. Moreover, even on the facts of the case it appears that as and when the six monthly payments were made, they were in respect of the rent which was then due at that point of time, and not payments of advance rent. For this reason both the courts below have rightly rejected this submission on the part of the tenants.

8. So far as the application of section 12(3)(b) is concerned, the lower appellate court has observed that whereas issues were framed at Exh.15 on 14th April 1980, the first deposit made by the tenant was as late as 9th February 1981. Thus, the amount of rent then due (on the date of framing of issues) was not deposited on the said date. Even thereafter, during the pendency of the appeal, the tenant was not regular in making the deposits.

9. For this reason the lower appellate court also found, and in my opinion rightly so, that the tenant had lost the protection of section 12(3)(b), and therefore,

the court had no alternative but to pass a decree for eviction. This position in law cannot be faulted since it is well settled by a number of decisions of the Supreme Court.

10. There is, therefore, no substance in the present revision and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

11. At this stage learned counsel for the tenant seeks time to vacate the premises. On the facts and circumstances of the case time to vacate the suit premises is granted upto 15th January 2001, subject to each of the petitioners filing the usual undertaking in this court within a period of three weeks from today. It is, however, clarified that there shall be no extension of time for the purpose of filing the undertaking, and if the same is not filed by due date, the relief against execution of the decree shall stand vacated ipso facto without any further orders.

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